

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

YELLOW CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11069 (CTG)

(Jointly Administered)

Objection Deadline: Nov. 9, 2023, at 5:00 p.m. (ET)

Ref. Docket No. 968

**OBJECTION OF SOUTHEASTERN FREIGHT LINES TO THE DEBTORS' NOTICE
OF POTENTIAL ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF
CERTAIN CONTRACTS OR LEASES ASSOCIATED WITH THE
NON-ROLLING STOCK ASSETS**

Southeastern Freight Lines ("SEFL"), by and through its undersigned counsel, hereby objects (this "Objection") to the *Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Non-Rolling Stock Assets* [Docket No. 968] (the "Cure Notice") on the grounds that the Cure Notice understates the amounts owed to SEFL for defaults under the Leases (as defined below). In support of its Objection, SEFL respectfully states as follows:

BACKGROUND

1. On August 6, 2023 (the "Petition Date"), each of the above-captioned debtors (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure. The Debtors are operating their businesses

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/case/yellowcorporation/info>. The location of Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is: 11500 Outlook Street, Suite 400, Overland Park, Kansas 66211.

and maintaining their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, the Debtors and SEFL entered into certain real property leases (the “Leases”)² for the five properties identified below (the “Properties”). As of the Petition Date, the Debtors owed rent and sales taxes to SEFL pursuant to the Leases as summarized below and further detailed in SEFL’s corresponding proofs of claim (“SEFL’s Prepetition Claims”):

SEFL Proof of Claim Number	Lease Date	Property Address	SEFL Proof of Claim Amount (SEFL’s Prepetition Claims)
0000012278	5/2009	11301 NW 134th St. Miami, FL	\$90,359.80
0000012261	6/30/2009	924 S. Cty Rd 1290 Odessa, TX	\$5,303.67
0000012268	6/2009	1317 E. 38th St. Lubbock, TX	\$9,007.58
0000012266	6/2009	3500 McColl Rd. McAllen, TX	\$14,084.56
0000012272	6/1/2009	14549 E. Admiral Pl. Tulsa, OK	\$13,123.28

3. In the Cure Notice, the Debtors appropriately propose to pay SEFL in full on SEFL’s Prepetition Claims if the Leases are assumed by Debtor YRC, Inc. (“YRC”) and assigned to a third party.

4. The Leases also require YRC to pay certain taxes and perform various other obligations with respect to the Properties (the “Additional Obligations”).

5. For example, Section 4 of the May 2009 Lease between SEFL and YRC for the Property located at 11301 NW 134th St., Miami, FL (the “Miami Lease”), provides that:

Tenant shall pay as Additional Rent all Real Estate Taxes (as hereinafter defined). ‘Real Estate Taxes’ shall mean all taxes, rates, assessments and impositions, general and special, levied or imposed

² The operative Leases are available upon request.

with respect to the Premises (including any accessories and improvements therein or thereto) for schools, public betterment, general or local improvements and any surtax and tax on nonresidential real properties, any water or sewer rate and service tax, whether such taxes, rates, assessments or impositions are charged by a municipal, state, federal or any other body of competent jurisdiction, as well as any tax on capital imposed on the Landlord or the owner of the Premises, accruing during and payable after the Commencement of the Lease Term.

6. In addition, Section 10 of the Miami Lease requires that:

Tenant at its cost shall maintain, and repair in a good and safe operating condition, all portions of the Leased Premises including, but not limited to, repair of the building structure, roof, yard, fence and underground utilities, windows, doors, dock doors, dock levelers, entrances and vestibules, and all electrical, mechanical, HVAC, plumbing and other fixtures and systems located within the leased Premises, including the sprinkler system servicing the leased Premises.

7. YRC has defaulted on its Additional Obligations under the Leases and failed to include cure amounts for those defaults in the Cure Notice.

8. Based upon the terms of the Leases and statements received from local taxing authorities where the Properties are located, YRC is obligated to pay the following taxes:

SEFL Proof of Claim Number	Property Address	Property Tax Due	Non-Valorem Assessments Due	Due Date³
0000012278	11301 NW 134th St. Miami, FL	\$353,739.13 ⁴	\$20,497.78 ⁵	11/30/2023
0000012261	924 S. Cty Rd 1290 Odessa, TX	\$5,543.61		11/30/2023
0000012268	1317 E. 38th St. Lubbock, TX	\$4,737.39 (estimate)		11/30/2023

³ YRC has consistently required SEFL to pay taxes in advance of the deadline to take advantage of discounts that are unavailable at a later date.

⁴ Includes 7% State of Florida sales tax.

⁵ Includes 7% State of Florida sales tax.

SEFL Proof of Claim Number	Property Address	Property Tax Due	Non-Valorem Assessments Due	Due Date ³
0000012266	3500 McColl Rd, McAllen, TX	\$10,358.12 (City) \$20,257.11 (County)		11/30/2023
0000012272	14549 E. Admiral Pl, Tulsa, OK	\$21,135 (estimate)		11/30/2023

9. Further, based on the most recent inspections of the Properties by SEFL, YRC has defaulted on its maintenance and repair obligations under the Leases:

SEFL Proof of Claim Number	Property Address	Maintenance and Repair Cost ⁶	Maintenance and Repair Obligation Description
0000012278	11301 NW 134th St. Miami, FL	\$500,000.00	This cure estimate includes the costs of paving, grounds, fencing, roof, and building repairs. It also includes State of Florida 40-year building inspection fee.
0000012261	924 S. Cty Rd 1290 Odessa, TX	\$100,000.00	This cure estimate includes costs of paving, grounds, fencing, roof, and building repairs.
0000012268	1317 E. 38th St. Lubbock, TX	\$100,000.00	This cure estimate includes costs of paving, grounds, fencing, roof, and building repairs.
0000012266	3500 McColl Rd. McAllen, TX	\$250,000.00	This cure estimate includes costs of paving, grounds, fencing, roof, as well as building repairs.
0000012272	14549 E. Admiral Pl. Tulsa, OK	\$200,000.00	This cure estimate includes costs of paving, grounds, fencing, roof, as well as building repairs.

10. Accordingly, when defaults for the Additional Obligations are added to SEFL's Prepetition Claims against YRC, the amount necessary to cure all defaults under the Leases at the time of any assumption and assignment will total no less than \$1,718,117.03, as further summarized below:

⁶ The maintenance and repair costs listed here are good faith estimates that may be higher or lower once bids are solicited and repairs and maintenance are completed.

Property Address	SEFL Proof of Claim Amount (SEFL's Prepetition Claims)	Additional Obligations Defaults	Total Cure (Prepetition Claims + Additional Obligations Defaults)
11301 NW 134th St., Miami, FL	\$90,359.80	\$874,236.91	\$964,596.71
924 S Cty Rd 1290 Odessa, TX	\$5,303.67	\$105,543.61	\$110,847.28
1317 E. 38th St. Lubbock, TX	\$9,007.58	\$104,737.39	\$113,744.97
3500 McColl Rd, McAllen, TX	\$14,084.56	\$280,615.23	\$294,669.79
14549 E. Admiral Pl, Tulsa, OK	\$13,123.28	\$221,135.00	\$234,258.28
TOTAL:			\$1,718,117.03

OBJECTION

11. SEFL objects to the Cure Notice because it does not propose to satisfy the Debtors' cure obligations consistent with section 365(b)(1)(A) of the Bankruptcy Code.

12. When a contract is assumed under section 365 of the Bankruptcy Code, the non-debtor third-party to that contract must be "made whole at the time of the Debtors' assumption of the contract." *In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998) (citations omitted). Accordingly, to the extent the Debtors seek to assume or assume and assign any of the Leases, the Debtors must pay the full cure amounts based upon the actual amounts that are due on the date the Leases are assumed and assigned. 11 U.S.C. § 365(b)(1). The Debtors may not assume and assign the Leases unless and until all defaults are cured, including with respect to the Additional Obligations. *See, e.g., In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir. 1996) (section 365(b) is designed to ensure that parties receive the benefit bargained for if a lease or contract is assumed).

13. SEFL also objects to the Cure Notice because it fails to satisfy the requirement that a debtor must provide adequate assurance of future performance by the assignee under the lease,

regardless of whether there has been a default under such lease. 11 U.S.C. § 365(f)(2)(B).

14. The Debtors will not know, and therefore cannot notify SEFL of, the identity of the proposed assignee of each of SEFL's Leases until the auction of the Debtors' assets has occurred. SEFL therefore reserves its rights to amend this Objection after the auction if the Debtors still have not provided adequate assurance of future performance by the proposed assignee under each Lease.

CONCLUSION

WHEREFORE, SEFL respectfully requests that any order entered by this Court authorizing the assumption or assumption and assignment of the Leases require the Debtors to cure all defaults under the Leases, including SEFL's Prepetition Claims and the Additional Obligations, in a manner consistent with this Objection, and grant to SEFL such other and further relief as the Court deems just and appropriate under the circumstances.

Dated: November 9, 2023

**FAEGRE DRINKER BIDDLE & REATH
LLP**

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